Supreme Court, U. S.
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RODAK, JR., CLERK

77-1747

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1977

[redacted]

NATIONAL LAND FOR PEOPLE, INC.
Petitioner,

vs.

THOMAS S. KLEPPE, ET AL.,
Respondents.

AND

RICHARD CHAVARRIA, ET AL.,
Intervenor-Respondents.

[redacted] PETITION FOR WRIT OF CERTIORARI
to the
UNITED STATES COURT OF APPEALS
for the
DISTRICT OF COLUMBIA

[redacted]

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Fresno Daily Legal Report 3923 — 5-10-78

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In the Supreme Court

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OCTOBER TERM, 1977

NOS. 76-2027 AND 76-2028

NATIONAL LAND FOR PEOPLE, INC.
Petitioner,

VS.

THOMAS S. KLEPPE, ET AL.,
Respondents.

AND

RICHARD CHAVARRIA, ET AL.,
Intervenor-Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Petitioner NATIONAL LAND FOR PEOPLE, INC. respectfully requests that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia entered on January 20, 1978.

ORDER BELOW

The January 20, 1978 order of the United States Court of Appeals for the District of Columbia vacated the judgment of the United States District Court for the District of Columbia entered on August 13, 1976 and directed the District Court to dismiss the entire action as moot pursuant to *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). On January 26, 1978, the District Court ordered that the action be dismissed pursuant to the order of the Court of Appeals for the District of Columbia.

The vacated District Court order was a preliminary injunction 1) directing defendants to initiate public rulemaking proceedings in compliance with the Administrative Procedure Act regarding criteria and procedures for Bureau of Reclamation approval of "excess land" sales under the federal reclamation law, 2) enjoining defendants from approving any contracts or proposals for sales of any "excess land" in the Westlands Water District pending promulgation of final regulations, and 3) ordering defendants to submit monthly progress reports to the court on the rulemaking proceedings. 417 F. Supp. 449 (D.D.C. 1976).

The orders referred to above are attached as Exhibits A, B, and C in the appendix to this petition.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). Jurisdiction in the District Court was based upon 5 U.S.C. §701-706, 28 U.S.C. §1346, and 43 U.S.C. §371 *et seq.*

STATUTES INVOLVED

Federal Reclamation Laws

Reclamation Act of 1902, ch. 1093, §5, 32 Stat. 389, 43 U.S.C. §431.

Omnibus Adjustment Act of 1926, ch. 292, §5, 46 Stat. 368, 43 U.S.C. §423e.

Administrative Procedure Act

Administrative Procedure Act, Pub L. No. 89-554, 80 Stat. 383, 5 U.S.C. §553.

QUESTION PRESENTED

Whether the entire case at bar is moot, where defendants have partially complied with the first requirement of a preliminary injunction entered against them, and have stated that they will comply with the second part of that injunction, but where full compliance has been indefinitely delayed and jeopardized by an intervening injunction entered against defendants in a related court action.

Petitioner asserts that not only does a very live controversy exist between the parties but that petitioner's interest in enforcement of federal reclamation laws is seriously and unfairly impaired by dismissal of this entire action.

STATEMENT OF THE CASE

In 1902 Congress passed the Reclamation Act to provide for federal construction of irrigation works to benefit family farmers. As the first Commissioner of the Reclamation Service stated,

> The object of the Reclamation Act is not so much to irrigate the land as it is to make homes . . . it is to bring about a condition whereby that land shall be put

into the hands of the small owner, whereby a man with a family can get enough land to support that family . . .[1]

To accomplish this purpose, the Reclamation Act requires that:

> No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. 43 U.S.C. §431, June 17, 1902, c. 1093, Sec. 5, 32 Stat. 389.

The 1926 Omnibus Adjustment Act supplemented the Reclamation Act of 1902 by allowing persons to receive federally subsidized water for land in excess of one hundred and sixty acres in consideration for signing recordable contracts with the government promising to sell such excess land to eligible buyers within a certain number of years (usually ten) subject to the approval of the Bureau of Reclamation. This amendment also provided for the appraisal of excess land subject to recordable contract at a price which does not reflect the value of the federally subsidized water. *See* 43 U.S.C. §423e May 15, 1930, c. 292, Sec. 5, 46 Stat. 368.

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[1]Joint Hearings Before The Select Committee on Small Business and the Committee on Interior and Insular Affairs of the United States Senate, Ninety-Fourth Congress, First Session on "Will The Family Farm Survive in America?", Federal Reclamation Policy (Westlands Water District), July 16 and 22, 1975 at 9.

Although large growers and corporations have repeatedly attempted to have the Reclamation Act's one hundred and sixty acre limitation and residency requirement repealed or declared unconstitutional, Congress and the courts have consistently reaffirmed these important provisions. *See Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275 (1958); *United States v. Tulare Lake Canal Company*, 535 F. 2d 1093 (9th Cir. 1976); *Yellen v. Hickel*, 352 F. Supp. 1300 (D.C. Ca. 1972).

Much of the controversy over reclamation law enforcement has centered upon the 600,000 acre Westlands Water District in the San Joaquin Valley of California, the largest recipient of federally subsidized water in the United States. The most numerous and serious allegations of reclamation law subversion have been directed at the large growers, investors, and corporate interests owning and controlling land in Westlands.[2]

As a result of such allegations, Congress enacted legislation in 1977 providing for the establishment of a special task force to study the record of reclamation law enforcement in the Westlands Water District. The San Luis Unit Federal Task Force Report concluded that "the intent of the 1902 Act was the settlement of families on their own farms. The farming of tracts of land averaging 2,200 acres in Westlands

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[2]Hearings before the Sub-Committee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States Senate, 86th Congress, First Session on S. 44, March 6, 1959.

Joint Hearings Before The Select Committee on Small Business and the Committee on Interior and Insular Affairs of the United States Senate, Ninety-Fourth Congress, First Session on "Will The Family Farm Survive in America?", Federal Reclamation Policy (Westlands Water District), July 17 and 22, 1975.

is not a result which is consistent with such intention . . . it is clear that to date the objective of settling families on farms which they would own and operate has not been achieved within the unit."[3]

The case at bar was initiated on May 25, 1976 by National Land for People, Inc., a group of small farmers and would-be farmers who were being deprived of the opportunity to purchase land in federal reclamation areas, particularly the Westlands Water District, because of the approval by the Bureau of Reclamation of insider land sales between large growers and corporations in violation of the spirit of the reclamation law. Plaintiff aserted that such approvals were facilitated by internal rules and regulations governing excess land sales which were promulgated in violation of the Administrative Procedure Act. Public rulemaking proceedings which complied with the Administrative Procedure Act, plaintiff argued, would insure that future criteria regarding approval of excess land sales would more closely conform to the purposes of the federal reclamation law.

On May 25, 1976, plaintiff moved for a preliminary injunction directing the Bureau of Reclamation to initiate public rulemaking proceedings and to suspend approval of all excess land sales in the Westlands Water District pending final completion of this rulemaking. On July 9, 1976, without opposition from plaintiff, the District Court granted the motion of several large landowners and corporations farming in the Westlands Water District for leave to intervene in the action.

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[3]Special Task Force Report on San Luis Unit, United States Department of the Interior, 1978, at 210.

The motion for preliminary injunction was argued on July 9, 1976 and the District Court reserved judgment pending the submission of additional briefs. On August 11, 1976, the Court issued a memorandum opinion and on August 13, 1976 entered an order directing the Bureau of Reclamation to initiate public rulemaking proceedings pursuant to the Administrative Procedure Act and to suspend approval of all excess land sales pending promulgation of final regulations.

Federal defendants and intervenor defendants appealed to the United States Court of Appeals for the District of Columbia from the District Court order on October 6, 1976 and September 30, 1976, respectively. On December 17, 1976, the District Court denied federal defendants' and intervenor defendants' motions for a stay of the August 13, 1976 order pending appeal. These same motions were denied by the United States Court of Appeals for the District of Columbia on January 13, 1977. Briefing of the appeal by all parties was completed on March 24, 1977.

On June 27, 1977, the Secretary of the Interior ordered a suspension of the approval of excess land sales in all federal reclamation projects pending adoption of final regulations. On August 25, 1977, the Secretary published proposed regulations governing the approval of excess land sales and announced that public comments would be received until November 23, 1977. Hearings on the proposed regulations were held throughout the west during the autumn of 1977.

On August 11, 1977 federal appellants moved to dismiss their appeal to the Court of Appeals for the District of Columbia and intervenor appellants opposed said dismissal.

On September 9, 1977, the Court of Appeals ordered the parties to submit memoranda on the question of whether argument and consideration of the appeals should be deferred to allow the Secretary of the Interior an opportunity to issue final rules. Appellee National Land For Peopie, Inc. and federal appellants responded that consideration of the appeals should be deferred; intervenor appellants argued in opposition to a deferral.

On October 21, 1977 the Court of Appeals ordered the parties to submit memoranda showing cause, if any there be, why the decision of the District Court should not be vacated and the case remanded to the District Court to be dismissed as moot.

On November 10, 1977, several large landowners, water districts, and counties filed six similar actions in the United States District Court for the Eastern District of California requesting a preliminary injunction enjoining the Bureau of Reclamation from continuing with the rulemaking proceedings pending the completion of an environmental impact statement. These cases were subsequently consolidated as *County of Fresno v. Andrus*, F-77-202-Civ., F-77-203-Civ., F-77-204-Civ., F-77-205-Civ., F-77-209-Civ. and F-77-213-Civ. On December 7, 1977, the District Court for the Eastern District of California denied both this petitioner's motion to intervene in that action and the government's motion for change of venue to the District Court for the District of Columbia for consolidation with the case at bar. On the same day the court issued from the bench a preliminary injunction restraining the government from continuing rulemaking proceedings pursuant to the Administrative

Procedure Act, or issuing final regulations, until it had prepared, publicly circulated and considered an adequate environmental impact statement, had allowed public comment on the statement, and had reconsidered the proposed regulations in light of the statement. A formal order was entered on January 4, 1978.

This petitioner appealed to the Court of Appeals for the Ninth Circuit from the order denying its motion for leave to intervene and lodged a protective notice of appeal from the order denying the motion for change of venue and the order granting the preliminary injunction on January 19, 1978.

On January 20, 1978, the Court of Appeals for the District of Columbia ordered the appeals in the case at bar dismissed as moot, vacated the judgment of the District Court, and remanded the case to the District Court with directions to dismiss. On January 26, 1978, the District Court dismissed the case as moot pursuant to the order of the Court of Appeals.

On March 6, 1978, Harris Farms, Inc., a corporation farming in the Westlands Water District and an intervenor defendant in the case at bar, filed an action in the District Court for the Eastern District of California praying for an order directing the Bureau of Reclamation to approve excess land sale applications in the Westlands Water District *before* the promulgation of final regulations and to employ the criteria and procedures found to be in violation of the Administrative Procedure Act by the District Court in the instant case. *Harris Farms, Inc., v. Andrus*, No. F-78-49-Civ. The

requested order in that case would be in direct violation of paragraph two of the vacated preliminary injunction issued by the District Court in the case at bar.

REASONS FOR GRANTING THE WRIT

The Court of Appeals for the District of Columbia has decided a federal question in a way which conflicts with decisions of the United States Supreme Court and other federal courts.

By vacating the judgment of the District Court and ordering the dismissal of the instant case as moot, the United States Court of Appeals for the District of Columbia has issued a ruling on an issue of federal justiciability which is in conflict with the decisions of this Court and other federal courts. The effect of the Court of Appeals order is to deprive petitioner's members of the vital protection afforded to them by the District Court injunction and to award a legal victory to those whom the District Court found to be in violation of the law.

Article III, Section 2 of the United States Constitution limiting the jurisdiction of federal courts to "cases and controversies" has been interpreted to require that a live controversy exist between the parties to a lawsuit. The requisite live controversy clearly exists in the case at bar.

Petitioner does not dispute that the Secretary of the Interior attempted to comply with the first part of the District Court order by initiating public rulemaking proceedings. However, he has been prevented from concluding such rulemaking proceedings, and thus from fully complying with the order, until an adequate environment impact statement has been filed pursuant to the order of the District Court for the Eastern District of California entered on January 8, 1978. That fact alone makes this a "live" case.

The vitality of the case at bar is even more obviously demonstrated by the second part of the District Court preliminary injunction enjoining the Secretary of the Interior "from tentatively or finally approving under the federal reclamation laws any contracts or other proposals for sales of any 'excess lands' in the Westlands Water District . . . until the final completion of said public rulemaking." This order is absolutely necessary to protect petitioner's interest in insuring that the excess land in the Westlands Water District will be available to small family farmers, the intended beneficiaries of the reclamation law, pursuant to regulations which fulfill the purposes of that law. Now that this entire action has been dismissed as moot the Bureau of Reclamation may begin approving excess land sales under the criteria and procedures which the District Court found to be in violation of the Administrative Procedure Act. A resumption of such approval procedures would effectively destroy the very rights which the instant suit was filed to protect.

Counsel for federal defendants has stated in his memorandum to the Court of Appeals for the District of Columbia that the Bureau of Reclamation does not intend to approve any excess land sales until final rules are issued. However, this assertion does not render the case moot. Such voluntary compliance has been consistently judged inadequate as a basis for a finding of mootness because the "defendant is free to return to his old ways . . ." *United States v. W. T. Grant*, 345 U.S. 629, 632 (1953). For example, the Secre-

tary of the Interior may change his mind at any time without legal sanction. A future administration which disagrees with the policies of the present Secretary could order the resumption of land sale approvals pursuant to the invalid regulations. Alternatively the District Court for the Eastern District of California may order the Bureau to approve such sales in *Harris Farms, Inc., v. Andrus, supra.* In light of these circumstances, dismissal of the case at bar as moot was surely inappropriate and premature.

The instant case is remarkably similar to *Green v. Connally,* 330 F. Supp. 1150 (D.D.C. 1971) in which Negro parents sued to enjoin the United States Treasury from according tax exempt status and deductibility of contributions to private schools in Mississippi which discriminated against black students. After the District Court had granted plaintiffs' motion for preliminary injunction, the Internal Revenue Service voluntarily changed its construction of the Internal Revenue Code and denied the tax advantages to all schools involved in discriminatory activities. When the government subsequently argued that the case should be dismissed as moot because of the voluntary compliance, the court disagreed, stating:

> In the first place there is ample doctrine that a defendant does not necessarily moot a case that is live in its inception by promising to conform to plaintiffs' wishes . . .
>
> We think plaintiffs are entitled to a declaration of relief on an enduring, permanent basis, not on a basis that could be withdrawn with a shifting in the tides of administration, or changing perceptions of sound discretion.

The District Court's rejection of the mootness defense in that case was affirmed by this Court *sub nom* in *Coit v. Green,* 404 U.S. 997 (1971).

The case at bar actually presents a more "live" controversy than that which existed in *Green* since the political and legal pressures on the Bureau of Reclamation to resume approval of land sales are substantial. *See, e.g. Harris Farms Inc. v. Andrus, supra.*

This Court has consistently held that a party requesting a dismissal for mootness based on its voluntary compliance bears a very heavy burden. As stated in *United States v. Concentrated Phosphate Exports Ass'n., Inc.,* 393 U.S. 199, 203 (1968), the test for mootness "is a stringent one . . . Mere voluntary cessation of allegedly illegal conduct does not moot a case . . . here we have only appellees' own statement that it would be uneconomical [to continue the allegedly illegal activities] . . . Such a statement cannot suffice to satisfy the heavy burden of persuasion which we have held rests upon those in appellees' shoes." Similarly, in the instant case it is unfair to let the rights of petitioner depend upon the government's unenforceable promise in a memorandum that it will abide by the court order whether or not it is in effect.

Another reason for the judicial refusal to declare cases moot in the face of voluntary compliance is the absence of a determination of the legality of the acts in question. *See Gray v. Sanders,* 372 U.S. 368 (1963); Federal Jurisdiction to Decide Moot Cases, 94 U. PA. L. REV. 125, 139-140 (1946).

Certainly there has been no admission by the government

in the case at bar that its practice of approving excess land sales pursuant to criteria that did not conform to the Administrative Procedure Act was illegal. Barring such an admission, the Bureau of Reclamation is free to return to a system of approving sales using rules that were found to be invalid by the District Court.

Moreover, because of society's interest in the final adjudication of disputes, the federal courts will usually hear cases which are technically moot if there is a likelihood of recurrence of the challenged activity in the future or if an issue of public interest or importance is presented. *See Carrol v. President and Commissioners of Princess Anne*, 393 U.S. 175, (1968); *Moore v. Oglivie*, 394 U.S. 814, (1969); *Division 1287 of Amal. Ass. of Street, Electric Railway and Motor Coach Employees of America v. Missouri*, 374 U.S. 74, (1963); *Friend v. United States*, 388 F. 2d 579 (D.C.C. 1967); *Women Strike for Peace v. Hickel*, 420 F. 2d 597 (D.C.C. 1969); *Matthews v. Hardy*, 420 F. 2d 607 (D.C.C. 1969); *Lansden v. Hart*, 180 F. 2d 679 (7th Cir. 1950); 132 A.L.R. 1186 (1941). Hence, even if the case at bar were moot, which it most certainly is not, it would still fall within both exceptions to the mootness rule.

There can be no doubt that the issues raised by the instant action are of foremost public importance and interest. Over the past year all of the major newspapers in this country have run editorials on the rules governing approval of excess land sales. *See Los Angeles Times*, October 23, 1977; *Wall Street Journal*, September 8, 1977; *New York Times*, August 26, 1977; *Washington Post*, September 3, 1977; *San Francisco Chronicle*, August 28, 1977; *San Francisco Examiner*, August 24, 1977.

In addition, the scholarly articles on the subject have urged a liberal interpretation of the mootness restriction, particularly on appeal. Writers note that a finding that a case is *not* moot "may advance judicial economy" because the "burden on all participants, including the court systems, is less on appeal than at trial, and an appellate decision may obviate the need for future litigation which would have to proceed through the trial stage once more." Mootness on Appeal in the Supreme Court, 83 HARV. L. REV. 1672, 1967, 1692 (1970). *See also* Disposition of Moot Cases by the U.S. Supreme Court, 23 U. CHI. L. REV. 77 (1955).

CONCLUSION

The case at bar is not moot because final regulations governing the approval of excess land sales have not yet been promulgated and there is nothing to prevent defendants from lifting the suspension on approval of excess land sales in the Westlands Water District before such rules are in effect. The resumption of such approval, which was prohibited by the District Court order vacated in the instant case, would deny to petitioner the rights which this lawsuit was filed to protect. Hence, there is a live controversy. For the foregoing reasons, this Court should grant a writ of certiorari to review the decision below.

Dated, Fresno, California,
May 9, 1978.

Respectfully submitted,

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GEORGE T. FRAMPTON, JR.
Attorneys for Petitioner,
NATIONAL LAND FOR PEOPLE, INC.

APPENDIX

UNITED STATES COURT OF APPEAL

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-2027

NATIONAL LAND FOR PEOPLE, INC.
a non-profit corporation

vs.

BUREAU OF RECLAMATION OF THE DEPARTMENT OF THE INTERIOR

RICHARD CHAVARRIA, *et al.*,
Appellants

And Consolidated Case
No. 76-2028

September Term, 1977

CIVIL ACTION 76-0928

United States Court of Appeals for the District of Columbia Circuit

FILED: JAN. 20, 1978

GEORGE A. FISHER
Clerk

BEFORE: McGowan and Leventhal, Circuit Judges

ORDER

On consideration of appellants' motion to dismiss appeal in No. 76-2028, the opposition thereto and of the responses to this Court's orders of September 9 and October 21, 1977, it is

ORDERED by the Court that these appeals are dismissed as moot, and it is

FURTHER ORDERED by the Court that the judgment of the District Court is vacated and these cases are remanded to the District Court with directions to dismiss. See *United States* v. *Munsingwear, Inc.* 340 U.S. 36 (1950).

The Clerk is directed to transmit a certified copy of this order to the District Court as promptly as the business of his office permits.

Per Curiam

EXHIBIT "A"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL LAND FOR PEOPLE, INC.,
Plaintiff,

vs.

BUREAU OF RECLAMATION OF THE DEPARTMENT OF THE INTERIOR, *et al.*,
Defendants.

FILED
JAN. 26, 1978
JAMES F. DAVEY,
Clerk

CIVIL ACTION NO.
76-0928

ORDER

On January 20, 1978, the United States Court of Appeals for the District of Columbia Circuit entered an order vacating the judgment of this Court and directing that this action be dismissed as moot. *See United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

Accordingly, it is this 26th day of January, 1978,

ORDERED that the renewed motion of intervenor Harris Farms, Inc., for modification of the preliminary injunction is dismissed as moot; and it is

FURTHER ORDERED that this action is dismissed.

BARRINGTON D. PARKER,
United States District Judge

Copies to Counsel

EXHIBIT "B"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL LAND FOR PEOPLE, INC.
Plaintiff,

vs.

THE BUREAU OF RECLAMATION OF THE DEPARTMENT OF THE INTERIOR, *et al.*,
Defendants.

FILED
AUG. 13, 1976
JAMES F. DAVEY,
Clerk

CIVIL ACTION No.
76-0928

ORDER

Upon consideration of Plaintiff's Motion for Preliminary Injunction, which came on for hearing on July 9, 1976, the Court having fully considered the memoranda, exhibits, affidavits, arguments of counsel and post-hearing memoranda of all parties,

IT IS HEREBY ORDERED

That Defendants forthwith initiate public rule-making proceedings in compliance with the Administrative Procedure Act, 5 U.S.C. 553, respecting the criteria and procedures to be used by the Bureau of Reclamation, Department of the Interior, to approve "excess lands" sales under the federal reclamation laws, 43 U.S.C. 431, 43 U.S.C. 423e, and it is FURTHER ORDERED

That Defendants be, and they hereby are enjoined from tentatively or finally approving under the federal reclamation laws any contracts or other proposals for sales of any "excess lands" in the Westlands Water District, San Joaquin Valley, California that are submitted to the Bureau of Reclamation on or after August 10, 1976, until the final completion of said public rule-making ordered to be initiated in

subparagraph (A), *supra*, in compliance with the Administrative Procedure Act, or until further order of the Court, and it is FURTHER ORDERED

That the defendants shall within 30 days from the date of this order, and every 30 days thereafter until further ordered, submit to the Court a report on all steps taken pursuant to the first paragraph of this order.

No security is required of the plaintiff; the Court does not perceive that the defendants will incur any damages by reason of this order.

August 13, 1976.

BARRINGTON D. PARKER,
United States District Judge

Copies to counsel.

EXHIBIT "C"

CERTIFICATE OF SERVICE

I hereby certify that a typewritten copy of the Brief for Appellee in the above-captioned cases has been served upon the counsel listed below by placing the same in the United States Mail, postage prepaid, properly addressed, this 17th day of May, 1978 to:

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FRESNO DAILY LEGAL REPORT

By Robert C. Hollingshead

Supreme Court, U. S.
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JUL 8 1978
MICHAEL RODAK, JR., CLERK

No. 77-1747

In the Supreme Court of the United States

OCTOBER TERM, 1978

NATIONAL LAND FOR PEOPLE, INC., PETITIONER

v.

CECIL D. ANDRUS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1747

NATIONAL LAND FOR PEOPLE, INC., PETITIONER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINION AND ORDERS BELOW

The order of the court of appeals (Pet. App. 16) directing that the case be dismissed as moot is unreported. The order of the district court granting the plaintiff's Motion for Preliminary Injunction (Pet. App. 18-19) and its subsequent order dismissing the case as moot (Pet. App. 17) are also unreported. The memorandum opinion of the district court (not reproduced in the petition) is reported at 417 F. Supp. 449.

JURISDICTION

The order of the court of appeals (Pet. App. 16) directing that the case be dismissed as moot was entered on January 20, 1978. On April 13, 1978, the Chief Justice extended the time within which to file a petition for a writ of certiorari to May 20, 1978. The petition was filed on May 18, 1978. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals abused its discretion by ordering the dismissal, for reasons of mootness, of this action seeking an order requiring the Secretary of the Interior to institute public rule making proceedings and directing him to promulgate rules and regulations concerning sales of "excess lands" under the reclamation laws.

STATEMENT

Petitioner seeks review of an order of the court of appeals directing that its action be dismissed as moot. The factual and legal setting of the case may be summarized as follows.

1. The Reclamation Act of 1902, 32 Stat. 388, as amended, 43 U.S.C. 391 *et seq.*, established a federal reclamation fund to be used for the construction and maintenance of irrigation works. Section 5 of the Act, 43 U.S.C. 431, established certain limitations on sales of water from federal reclamation projects. Specifically, Section 5 prohibited the sale of any right to the use of water to a private landowner with respect to any lands held by him in excess of 160 acres and further provided that no such sale shall be made to any landowner "unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land * * *."

Section 5 of the Reclamation Act was subsequently supplemented by Section 46 of the Omnibus Adjustment Act of 1926, 44 Stat. 649, as amended, 43 U.S.C. 423e. Section 46 states, in substance, that all contracts for the sale of federal reclamation water to local irrigation districts must provide that all landowners receiving federal water and holding in excess of 160 irrigable acres

shall agree to convey their "excess lands" under terms and conditions satisfactory to the Secretary. The sale price of such "excess lands" shall be fixed at an appraised value ascertained "on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works."

The Westlands Water District, a unit encompassing approximately 570,000 acres in the San Joaquin Valley of California, receives federal water subject to the requirements of the Reclamation Act and Section 46 of the Omnibus Adjustment Act. Many Westlands landowners owning more than 160 irrigable acres have entered into contracts with the Secretary by which, in return for receiving federal water, they have agreed to convey their "excess lands" within a fixed period (generally 10 years) at a price approved by the Secretary. The contracts also provide that the Secretary shall determine whether a prospective purchaser meets the eligibility requirements of the reclamation laws. Should a landowner fail to convey the "excess lands" within the required period, the lands will be conveyed by the Secretary under power of attorney.

2. The petitioner, National Land for People, Inc. ("National Land") commenced this action against the Secretary and the Commissioner of the Bureau of Reclamation on May 25, 1976. National Land alleged, among other things, that the Secretary, without complying with the public rule making requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, had formulated a body of rules and regulations for the purpose of determining whether a proposed "excess land" transaction was in compliance with the eligibility requirements of the reclamation laws. National Land moved for a preliminary injunction requiring the

Secretary to initiate public rule making proceedings and restraining him from approving any "excess land" sales in the Westlands Water District until after the final rules and regulations were published.

The federal defendants answered and contended, among other things, that the public rule making requirements of the APA were inapplicable. Thirteen persons and organizations having various interests in "excess land" sales in the Westlands Water District were given leave to intervene as parties defendant.

The district court, on August 13, 1976, entered an injunction directing the Secretary to initiate public rule making proceedings in compliance with the APA. The injunction also restrained the Secretary from approving any contracts or other proposals for sales of "excess lands" in the Westlands Water District until after completion of public rule making.

The federal defendants and the intervenor-defendants each appealed the injunctive order. However, on August 11, 1977, the federal defendants moved the court of appeals that their appeal be dismissed. A few days later, on August 25, 1977, the Secretary published proposed rules and regulations in the Federal Register. 42 Fed. Reg. 43044-43049.

On September 9, 1977, the court of appeals directed the Secretary to advise it concerning further handling of the appeals. After the parties had filed their responses, the court of appeals entered another order which directed the parties to show cause why the order of the district court should not be vacated as moot. Subsequently, on January 20, 1978, the court of appeals entered an order which dismissed the appeals as moot, vacated the order

of the district court, and remanded the cases to the district court with directions to dismiss as moot. This petition followed.

ARGUMENT

The decision of the court of appeals is correct and presents no issue of general importance warranting review in this Court.

1. The exercise of judicial power under Article III of the Constitution is dependent upon the existence of a case or controversy. *Preiser* v. *Newkirk*, 422 U.S. 395, 401; *North Carolina* v. *Rice*, 404 U.S. 244, 246. The "case or controversy" requirement persists throughout the entire course of litigation, including appeals; as this Court stated in *Steffel* v. *Thompson*, 415 U.S. 452, 459 n. 10: "[t]he rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Thus, a formerly viable suit may be dismissed at any stage of the litigation if intervening events have rendered it moot.

An action seeking declaratory and injunctive relief will be dismissed as moot if the defendant ceases to persist in the challenged conduct and, in addition, satisfies the court that there is no reasonable expectation that the alleged wrong will be repeated in the future. *Preiser* v. *Newkirk*, 422 U.S. 395, 404; *Securities and Exchange Commission* v. *Medical Committee for Human Rights*, 404 U.S. 403, 406. In determining whether a case should be dismissed upon the defendant's representations that it has permanently terminated its former conduct, a court will consider all relevant factors. The decision concerning dismissal lies in the discretion of the court and will be reversed on appeal only if an abuse of discretion is

demonstrated. As this Court stated in *United States* v. *W.T. Grant Co.*, 345 U.S. 629, 633:

> * * * the moving party must satisfy the court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive. The chancellor's decision is based on all the circumstances; his discretion is necessarily broad and a strong showing of abuse must be made to reverse it. To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations.

2. The circumstances of this case demonstrate that the court below did not abuse its discretion by ordering this action to be dismissed as moot. The petitioner commenced this action in order to obtain a declaration that the Secretary is required by law to promulgate regulations in accordance with the public rule making requirements of the APA and to secure an injunction directing him to comply with these requirements. After the district court entered its injunction, the Secretary moved the court of appeals that his appeal be dismissed. Subsequently, on August 25, 1977, the Secretary published proposed rules and regulations in the Federal Rgister. 42 Fed. Reg. 43044-43049. In addition, the Secretary has conducted public hearings on the proposed rules, has suspended approvals of all "excess land" sales pending promulgation of the final regulations (although the injunction applied only to sales within the Westlands Water District), and is now preparing an environmental impact statement concerning the proposed rules. Upon inquiry from the court of appeals, the Secretary advised that he intends to publish final rules and regulations regardless of the outcome of this litigation and that he will defer approvals

of "excess land" sales until after the final regulations are published.[1]

In short, the Secretary has represented that he will voluntarily grant the petitioners all the relief which they are seeking in this action regardless of the ultimate resolution of this action and his actions have been entirely consistent with his representations. The petitioners assert (Pet. 11-12) that the Secretary might change his position and decline to publish the final rules; however, this assertion is based solely upon speculative contingencies analogous to those rejected by this Court on prior occasions. *Preiser* v. *Newkirk*, 422 U.S. 395, 403; *Hall* v. *Beals*, 396 U.S. 45, 49. Petitioners have fallen far short of demonstrating that the court of appeals abused its discretion by directing that this action be dismissed as moot.

The decision of the court of appeals is not in conflict with any decisions of this Court or the other courts of appeals and presents no question of general importance warranting review by this Court.

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[1]The Secretary also advised the court of appeals that he did not object to the court holding the appeals in abeyance until after the final regulations are published. While we believe the court of appeals' disposition of the case was entirely proper, the Secretary still has no objection to holding the appeals in abeyance until after the final regulations are published. Should this Court determine to grant the petition for a writ of certiorari, the appropriate course might be to enter an Order directing the court of appeals to hold the appeals in abeyance pending publication of the final regulations, rather than setting the case for briefing and oral argument.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1978.

Supreme Court, U. S.
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No. 77-1747

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NATIONAL LAND FOR PEOPLE, INC., *Petitioner,*

v.

CECIL D. ANDRUS, et al., *Respondents,*

and

RICHARD CHAVARRIA, et al., *Intervenor-Respondents.*

On Petition For Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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On Petition For Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR THE INTERVENOR-RESPONDENTS IN OPPOSITION

Intervenor-Respondents respectfully urge that a writ of certiorari should not issue as requested by petitioner to review the order of the United States Court of Appeals for the District of Columbia Circuit entered on January 20, 1978, because there are no special or important reasons supporting such review.

OPINION AND ORDERS BELOW

The order of the court of appeals of January 20, 1978, directing that the case be dismissed as moot (Pet. App. 16) is unreported, as is that court's order of October 21, 1977, directing the parties to show cause why the judgment of the district court should not be vacated and the case remanded with directions to dismiss the complaint as moot (Appendix 1 hereto). The order of the district court granting the plaintiff's motion for preliminary injunction (Pet. App. 18-19) and its subsequent order dismissing the case as moot (Pet. App. 17) are also unreported. The memorandum opinion of the district court (not contained in the petition) is reported at 417 F. Supp. 449.

JURISDICTION

The order of the court of appeals (Pet. App. 16) directing that the case be dismissed as moot was entered on January 20, 1978. On April 13, 1978, the Chief Justice signed an order extending the time in which to file a petition for a writ of certiorari to May 20, 1978. The petition was lodged with the Clerk on May 18, 1978, but held pending the submission of corrected copy which was accomplished June 15, 1978. Time was granted to and including August 15, 1978 in which to respond. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Did the court of appeals abuse its discretion by ordering dismissal of the case at bar in which the Federal respondents have fully complied with the first part of a preliminary injunction by instituting public rulemaking and have assured the court of appeals in writing that irrespective of whether or not the preliminary

injunction is upheld on appeal they will continue to comply with the second part of the injunction by not taking the action restrained until rulemaking is completed.

STATEMENT OF THE CASE

The petitioner, National Land for People, Inc. (NLP), commenced this action against the Secretary of the Interior and the Commissioner of Reclamation on May 25, 1976.

The major issue asserted was that the letters and memoranda of the Solicitor of the Department of Interior used in the administration of reclamation law constituted rules and regulations which had not been promulgated as required under the Administrative Procedure Act (APA).

NLP moved for a preliminary injunction requiring the Secretary to initiate public rule-making proceedings and restraining him from approving any excess land sales in the Westlands Water District until the Secretary had published proposed rules and finally promulgated such rules under the APA requirements (5 U.S.C. § 553). Richard Chavarria as a potential buyer, and other potential buyers and owners of excess lands in the Westlands Water District were permitted to intervene as defendants.

Major issues raised by the Federal defendants and the intervenors were that the public rule-making requirements of the APA were not applicable to Interior because of the public contract and public property exemptions, and that NLP lacked standing to sue under *Simon* v. *Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976), *Warth* v. *Seldin,* 422 U.S. 490 (1975) and *Linda R. S.* v. *Richard D.,* 410 U.S.

614 (1973) and other recent holdings of this Court. A preliminary injunction nevertheless issued and both the United States and the Chavarria group appealed to the Court of Appeals for the District of Columbia Circuit.

While the case was on appeal, the Interior Department announced that rules and regulations covering excess lands would be promulgated. A motion was filed by the Federal defendants in the court of appeals on August 11, 1977, asking that their appeal be dismissed. In an order of the court of appeals issued *sua sponte* on September 9, 1977, the court noted:

> that the Secretary, on June 27, 1977, ordered a halt to approval of sales of excess lands under the Reclamation Act of 1902, as amended, pending the adoption of final regulations governing these sales. On August 25, 1977, the Secretary published proposed rules to govern sales of excess lands. The Secretary's announcement indicates that comments will be received until November 23, 1977, and that the Department of the Interior intends to proceed expeditiously.

Accordingly the court ordered the parties to submit memoranda on the question whether argument and consideration of the appeals should be deferred pending promulgation of the final rules.

Following consideration of the responses by the parties to the September 9 order, and "it appearing to the Court that a proper resolution in light of the memoranda of the parties would be to dismiss these actions as moot," the court of appeals on October 21, 1977, ordered the parties to show cause "if any there be" within fifteen days why the proceedings should not be dismissed, citing *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950). (Appendix 1 hereto). After the parties responded the court of appeals issued its order of January 20, 1978, dismissing the appeals as moot and remanding for dismissal below. NLP now petitions for review of this action by writ of certiorari.

REASONS FOR DENYING THE WRIT

The Court Of Appeals For The District Of Columbia Circuit Acted In A Manner Thoroughly Consistent With Previous Decisions Of This Court And The Other United States Courts Of Appeals. That Action, Which Raises No Special Or Important Questions, Does Not Warrant Review On Certiorari.

Contrary to the contention of petitioner, the decision of the court of appeals in ordering dismissal of the appeal as moot and ordering the judgment of the district court vacated, is consistent with the decisions of this Court and is not in conflict with the decisions of any other circuit court of appeals. Therefore, there are no "special and important reasons" for granting review on writ of certiorari in this case.

Intervenor-respondents contend that there is at present no actual controversy in this case, as required by interpretations of article III, section 2 of the United States Constitution limiting the jurisdiction of Federal courts to "cases and controversies." *Preiser* v. *Newkirk*, 422 U.S. 395, 401 (1975).

The first part of the district court's preliminary injunction ordered:

> That defendants forthwith initiate public rulemaking proceedings in compliance with the Administrative Procedure Act, 5 U.S.C. 553, respecting the criteria and procedures to be used by the Bureau of Reclamation, Department of the Interior, to approve "excess lands" sales under the

federal reclamation laws, 43 U.S.C. 431, 43 U.S.C. 423e. . . .

On August 25, 1977, the Secretary of Interior initiated public rule-making by publishing proposed "Reclamation Rules and Regulations For Acreage Limitation" (Federal Register, Volume 42 No. 165, Thursday, August 25, 1977, pp. 43044-43049), thus complying with the first part of the injunction. Therefore, there is no actual controversy as to the first part of the order on appeal.

The second part of the district court's preliminary injunction of August 13, 1976, ordered:

> That Defendants be, and they hereby are enjoined from tentatively or finally approving under the federal reclamation laws any contracts or other proposals for sales of any "excess lands" in the Westlands Water District, San Joaquin Valley, California that are submitted to the Bureau of Reclamation on or after August 10, 1976, until the final completion of said public rule-making ordered to be initiated in subparagraph (A), *supra*, in compliance with the Administrative Procedure Act, or until further order of the Court. . . .

On January 27, 1977, the Secretary of Interior ordered a suspension of the approval of excess land sales in *all* Federal reclamation projects pending adoption of final regulations. This order exceeded the terms of the preliminary injunction in two ways. First, it referred to all Federal reclamation projects lands, not just those located in the Westlands Water District. Second, it referred to all excess land sales applications whether filed before or after August 10, 1976.

Consistent with the Secretary's order exceeding the terms of the injunction, in documents submitted to the

court of appeals, Federal respondents repeatedly assured the court that they did not intend to resume processing excess land sales applications until such time as the final rules and regulations had been promulgated. For example, in a document filed with the court on September 21, 1977, respondents stated:

> the Secretary has determined to exercise his legal authority to promulgate such rules and regulations *even if it should be determined that the district court erred in holding that he was required to do so.* Further, the Secretary does not intend to approve any "excess land" sales until after the final regulations are promulgated, *whether or not the district court's order suspending "excess lands" sales approvals is dissolved or modified.* [Emphasis added.]

Again, in a filing with the court of November 4, 1977, Federal respondents stated that:

> the Secretary is now firmly committed to promulgating final rules and regulations *irrespective of the outcome of the present appeals.* [Emphasis added.]

Based on these representations, the controlling decision, which has been ignored by petitioner,[1] is *DeFunis*

[1] Petitioner cites a series of cases (*United States* v. *Phosphate Export Assn.*, 393 U.S. 199, 203 (1968); *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 632 (1953); and *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C. 1971)) for the proposition that voluntary compliance is inadequate as a basis for a finding of mootness. These cases are not applicable to the present circumstances as discussed in *DeFunis* v. *Odegaard*, 416 U.S. 312, 318-319 (1974). In any event, petitioner has mischaracterized the decisions. This Court has qualified the general rule by pointing out that a "case may nevertheless be moot if the defendant can demonstrate that 'there is no reasonable expectation that the wrong will be repeated.'" *United States* v. *W. T. Grant Co., supra* at 633.

v. *Odegaard,* 416 U.S. 312 (1974). In *DeFunis* this Court held that the issue of the constitutionality of the preferential admissions policy of the University of Washington Law School had become moot due to the impending graduation of the plaintiff from the law school. This Court so concluded based upon the statements of counsel for the President of the University during oral argument before the Court that the plaintiff had registered for his final quarter in law school and that the law school would not in any way seek to abrogate the registration. The Court stated:

> The respondents have represented that, without regard to the ultimate resolution of the issues in this case, DeFunis will remain a student in the Law School for the duration of any term in which he has already enrolled. Since he has now registered for his final term, it is evident that he will be given an opportunity to complete all academic and other requirements for graduation, and, if he does so, will receive his diploma regardless of any decision this Court might reach on the merits of this case. In short, all parties agree that DeFunis is now entitled to complete his legal studies at the University of Washington and receive his degree from that institution. A determintion by this Court of the legal issues tendered by the parties is no longer necessary to compel that result, and could not serve to prevent it.

DeFunis v. *Odegaard, supra* at 316-317.

With regard to the sufficiency of the representations this Court commented as follows:

> It matters not that these circumstances partially stem from a policy decision on the part of the respondent Law School authorities. The respondents, through their counsel, the Attorney General of the

> State, *have professionally represented* that in no event will the status of DeFunis now be affected by any view this Court might express on the merits of this controversy. And it has been settled practice of the Court, in contexts nc less significant, fully to accept representations such as these as parameters for decision. [Citations.] [Emphasis added.]

DeFunis v. *Odegaard, supra* at 317. *See also Sullivan* v. *Meade Independent School District No. 101,* 530 F.2d 799, 808 (8th Cir. 1976).

In this case, the Secretary of the Interior, through the Department of Justice, counsel for respondents, has "professionally represented" to the court of appeals below, that respondents would not halt the rulemaking proceedings nor approve excess lands sales prior to the completion of the rulemaking. This assurance renders this case indistinguishable from *DeFunis.* As in *DeFunis,* petitioner here has been assured of obtaining all of the relief sought in its lawsuit. Action by this Court in the present case would no more affect whether excess lands sales applications will be considered and approved based on reclamation rules and regulations enacted pursuant to the APA than action by this Court in *DeFunis* would have affected whether *DeFunis* received his law degree.[3]

The preliminary injunction issued by the United States District Court for the Eastern District of California in *County of Fresno* v. *Andrus* (F-77-202-CIV,

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[3] If this case were a voluntary compliance case, dismissal for mootness would still have been appropriate. The written professional representations of Federal respondents to the court of appeals were appropriate parameters for a decision that "there is no reasonable expectation that the wrong will be repeated."

F-77-203-CIV, F-77-204-CIV, F-77-205-CIV, F-77-209-CIV, and F-77-213-CIV) on December 7, 1977, enjoining the Bureau of Reclamation from continuing with rule-making proceedings pending the completion of an environmental impact statement, does not, as argued by petitioner, breathe life into this case. That decision was brought to the attention of the appeals court prior to its decision and the order requiring an EIS is merely a part of the rule-making process.

The filing of a lawsuit in the District Court for the Eastern District of California early this year (*Harris Farms, Inc.* v. *Andrus,* No. F-78-49-CIV), referred to by the petitioner, does not affect this case either. That action cannot change the representations made to the court of appeals in the present case.

Contrary to the assertion of petitioner this case is not one of "foremost public importance and interest." It involves only the question of compliance with the Administrative Procedure Act. The preliminary injunction of the District Court did not deal in any way with the substantive content of rules and regulations to be promulgated thereunder pursuant to the APA. It required only that the process of rulemaking be initiated. The substantive matters are now being considered in the legislative and administrative arenas.[3] Once the regulations promulgated pursuant to the APA have become final, with or without Congressional action, then the broad issues of Congressional intent may

[3] *See, e.g.*, in the 95th Congress S.2606, S.1812, S.242, S.2310, S.2818, H.R.13350, H.R.13840, H.R.12983, H.R.3420.

be appropriate for judicial determination.[4] No such issues, however, were before the courts below, nor are they here.

In all the circumstances, as indicated in *United States* v. *Munsingwear, Inc.,* 340 U.S. 36, 40 (1950), the court of appeals had a duty to vacate the judgment before it and remand with a direction to dismiss.[5] Such dispo-

[4] Thus whether the 160-acre limitation or the residency requirement contained in the Reclamation Act of 1902 (section 5, 43 U.S.C. § 431) is applicable to the sale of Federal reclamation project water pursuant to the terms of the 1926 Omnibus Adjustment Act (section 46, 43 U.S.C. § 423e) is immaterial to the consideration of the question now before this Court. While petitioner states at page 5 of its petition that Congress and the courts have consistently reaffirmed the so-called "residency requirement" of Federal reclamation law, such is not the fact. Intervenor-respondents contend that the "residency requirement" does not apply to lands in the Westlands Water District or other Federal reclamation projects lands within projects instituted after section 5 of the Reclamation Act of 1902 was modified by the Omnibus Adjustment Act of 1926, adding section 46 to the Federal reclamation laws. Section 46 is applicable to projects initiated after 1926. Neither *Ivanhoe Irrigation District* v. *McCracken,* 357 U.S. 275 (1958) nor *United States* v. *Tulare Lake Canal Co.,* 535 F.2d 1093 (9th Cir. 1976), *cert. denied,* 429 U.S. 1121 (1977), considered the applicability of the "residency requirement" contained in section 5 of the 1902 Act. The decision on this issue in *Yellen* v. *Hickel,* 352 F.Supp. 1300 (S.D.Cal. 1972), has been vacated on appeal in *United States* v. *Imperial Irrigation Dist.,* 559 F.2d 509 (9th Cir. 1977), because the plaintiffs raising that issue were held to be without standing to do so. Therefore, there is at present no pending decision of any court concerning the vitality of the "residency requirement" with regard to projects administered under section 46 of the Federal recelamation laws. As indicated in the text, however, this issue is not before this Court on the present petition and was not before the lower court.

[5] Federal defendants suggest in their Brief in Opposition to the present petition (p. 7, n.1) that an acceptable disposition of this case might be for this Court to order the court of appeals to hold

sition prevents the district court's decision, "unreviewable because of mootness, from spawning any legal consequences." *U.S.* v. *Munsingwear, Inc., supra* at 41; *see also Welch* v. *Simon,* 498 F.2d 1060, 1062 (D.C. Cir. 1974); *Acheson* v. *Droesse,* 197 F.2d 574, 577 (D.C.Cir. 1952).

CONCLUSION

There are no special or important reasons why this Court should exercise its sound discretion in favor of granting the present petition for review on writ of certiorari.

The decision of the court of appeals below ordering that this case be dismissed as moot for the reason that no actual controversy exists between the parties was based upon and consistent with prior decisions of this Court and is not in conflict with the decisions of any other circuit court of appeals.

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these appeals in abeyance until final regulations are published. This alternative was fully briefed by the parties for the benefit of the court of appeals and intervenor-respondents strongly opposed it. Having considered this alternative in light of the factual circumstances before it, the court of appeals decided the appropriate course was to dismiss the appeals as moot. Intervenor-respondents support the court of appeals decision and continue to oppose strenuously holding these appeals in abeyance. Such disposition would be prejudicial to intervenor-respondents, who are entitled either to a hearing on the merits before the court of appeals or a dismissal of the appeals as moot, as ordered.

For the foregoing reasons intervenor-respondents respectfully urge that the petition for a writ of certiorari be denied.

Respectfully submitted,

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August 15, 1978

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1977

Civil Action No. 76-0928

No. 76-2027

NATIONAL LAND FOR PEOPLE, INC., a non-profit corporation

v.

BUREAU OF RECLAMATION OF THE DEPARTMENT OF THE INTERIOR

RICHARD CHAVARRIA, et al., Appellants

No. 76-2028

NATIONAL LAND FOR PEOPLE, INC., a non-profit corporation

v.

BUREAU OF RECLAMATION OF THE DEPARTMENT OF THE INTERIOR, et al., Appellants

(FILED OCTOBER 21, 1977)

BEFORE: McGowan and Leventhal, Circuit Judges

Order

Upon consideration of appellants' motion to dismiss appeal in number 76-2028, of the responses thereto, and of the memoranda of the parties filed in response to this Court's order filed September 9, 1977 and it appearing to the Court that a proper resolution in light of the memoranda of the parties would be to dismiss these actions as moot, it is

ORDERED by the Court that counsel for the parties in the above consolidated cases are directed to show cause, if any there be, within 15 days from the date of this order why the judgment of the District Court on appeal herein should not be vacated and the case remanded with directions to dismiss the complaint as moot. See *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950).

Per Curiam